

2009

Tracey L. Southwick v. Phillip D. Southwick : Reply Brief

Utah Court of Appeals

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Recommended Citation

Reply Brief, *Tracey L. Southwick v. Phillip D. Southwick*, No. 20090861 (Utah Court of Appeals, 2009).
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IN THE UTAH COURT OF APPEALS

TRACY L. SOUTHWICK, individually;)	
and TRACY L. SOUTHWICK and)	
VICKIE L. SOUTHWICK, in their)	
capacity as trustees of the SOUTHWICK)	
FAMILY TRUST;)	Appellate Case No. 20090861-CA
)	
Plaintiffs/Appellants/Cross-Appellees)	
)	
v.)	
)	
PHILIP D. SOUTHWICK, individually)	REPORTED OPINION REQUESTED
and as trustee of the DON B.)	
SOUTHWICK AND BARBARA P.)	
SOUTHWICK IRREVOCABLE TRUST;)	
)	
Defendant/Appellee/Cross-Appellant)	

REPLY BRIEF OF CROSS-APPELLANT

APPEAL FROM THE DECISION AND ORDER
OF THE HONORABLE BEN H. HADFIELD OF THE FIRST JUDICIAL
DISTRICT COURT OF BOX ELDER COUNTY, STATE OF UTAH

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FILED
UTAH APPELLATE COURTS

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TRACY L. SOUTHWICK, individually;
and TRACY L. SOUTHWICK and
VICKIE L. SOUTHWICK, in their
capacity as trustees of the SOUTHWICK
FAMILY TRUST;

Plaintiffs/Appellants/Cross-Appellees

v.

PHILIP D. SOUTHWICK, individually
and as trustee of the DON B.
SOUTHWICK AND BARBARA P.
SOUTHWICK IRREVOCABLE TRUST;

Defendant/Appellee/Cross-Appellant

Appellate Case No. 20090861-CA

REPORTED OPINION REQUESTED

**APPEAL FROM THE DECISION AND ORDER
OF THE HONORABLE BEN H. HADFIELD OF THE FIRST JUDICIAL
DISTRICT COURT OF BOX ELDER COUNTY, STATE OF UTAH**

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ARGUMENTS

Tracy's beneficial interest in the Trust was terminated pursuant to his own actions and representations. Even if his beneficial interest was not terminated, however, Tracy is not entitled to claim an interest in pre-Complaint distributions or to assert that Phillip breached his fiduciary duties since Phillip acted pursuant to the directive given to Phillip by the Decree of Divorce issued by Judge Gunnell on November 4, 1991 and to the express, written directions of Tracy himself.

I. TRACY TERMINATED HIS STATUS AS A BENEFICIARY OF THE TRUST.

Tracy terminated his interest in the Trust by either (a) executing a Waiver and Assignment that substantially complied with Utah's Disclaimer Statute; (b) waiving his beneficial interest in the Trust; or (c) agreeing to a mutual modification of the Trust.

A. Substantial Compliance with Utah's Disclaimer Statute.

Tracy does not dispute that his Waiver and Assignment strictly complied with the first three provisions of the Disclaimer Statute in effect when Tracy signed the Waiver and Assignment. *See* Tracy's Reply Brief at 7-8. Tracy also does not dispute that his Waiver and Assignment substantially complied with the fourth and final provision of the relevant version of the Disclaimer Statute. *See id.* Instead, Tracy asserts that all four provisions of the 1991 version of the Disclaimer Statute require strict compliance to effectuate a valid disclaimer. *See id.*

However, the sole basis cited by Tracy in support of his assertion is an out-of-context statement taken from a case dealing with the failure of a beneficiary to even

substantially comply with an amended version of the disclaimer statute. *See id.* In *Faulkner*, the beneficiary of a trust “accepted various items from the trust, including television equipment and household items, a kiln, and an opal ring.” *Whitney v. Faulkner*, 2004 UT 52, ¶ 3, 95 P.3d 270. After accepting these items from the trust, the beneficiary executed a document entitled “Renunciation of Interest” purporting to “renounce, relinquish, and otherwise forfeit all [his] right, title, interest, or claim as a beneficiary of the [trust].” *Id.* at ¶¶ 3-6 (emphasis added).

Although the disclaimer statute in force at that time provided for partial disclaimers, it also provided that “[t]he right to disclaim property or an interest therein is barred by an acceptance of the property or interest or a benefit under it.” *Id.* at ¶ 12 (quoting UTAH CODE ANN. § 75-2-801(5)(c) (Supp. 2003)). Based upon these facts and law, the Utah Supreme Court concluded that “[t]he disclaimer was ineffective as a total disclaimer because he accepted property from the trust, and as a partial disclaimer because it did not accurately describe the interest to be disclaimed.” *Id.* at ¶ 14.

In addressing the beneficiary’s substantial compliance argument, the court found that “by accepting property from the trust, he failed to comply with the third provision” of the disclaimer statute, which the court described as “the acceptance of no benefit from the interest sought to be disclaimed.” *Id.* at ¶ 13. Consequently “[his] compliance with the statute [did] not depend on whether he substantially complied with the partial disclaimer provisions.” *Id.*

Accordingly, the court found that not only had the beneficiary failed to strictly comply with the applicable statutory provision; he also failed to even substantially comply with the statutory provision. As a result, the court noted that “[the beneficiary’s] **substantial compliance** argument **simply ignores both the language of the statute and of the document** he executed.” *Id.* at ¶ 14. This is the statement taken out of context by Tracy in arguing that “Phillip’s position was rejected by the Utah Supreme Court.” *See* Tracy’s Reply Brief at 7. According to Tracy, “[t]he Utah Supreme Court stated that ‘**substantial compliance**’ with this disclaimer statute, rather than strict compliance, ‘**simply ignores both the language of the statute and of the document...**’” *See id.*

Putting the statement back in context, however, reveals that the court was not making an across-the-board statement that strict compliance was required of all of the provisions of the disclaimer statute. The court was clearly rejecting the substantial compliance argument made by that particular beneficiary in that particular case since the beneficiary did not even substantially comply with a provision of the relevant disclaimer statute. Given that the beneficiary failed to even substantially comply with the statutory provision, it was not necessary for the court to determine whether substantial compliance was sufficient to satisfy the provision or whether strict compliance was required.

Furthermore, *Faulkner* involved an amended version of the disclaimer statute. The version of the Disclaimer Statute in effect when Tracy signed the Waiver and Assignment provides in relevant part, “[t]he disclaimer shall: **(i)** describe the property or interest in it disclaimed; **(ii)** declare the disclaimer and extent of it; **(iii)** be signed by the

disclaimant; and (iv) state that the disclaimer is proper under Subsection (4), and was made within the required time limits.” UTAH CODE ANN. § 75-2-802(1)(b) (1991) (emphasis added). In contrast, the version of the disclaimer statute at issue in *Faulkner* provided, “[t]he disclaimer shall: (a) describe the property or interest disclaimed; (b) declare the disclaimer and extent thereof; and (c) be signed by the disclaimant.” See *Faulkner*, 2004 UT 52, ¶ 9, 95 P.3d 270; UTAH CODE ANN. § 75-2-801(3) (Supp. 2003) (emphasis added).

Accordingly, the fourth provision of the 1991 version of the Disclaimer Statute—the only provision with which Tracy’s Wavier and Assignment did not strictly comply—was no longer included in the statute when *Faulkner* was decided by the Utah Supreme Court. Consequently, it cannot be argued that the Utah Supreme Court ruled on whether a valid disclaimer could be effectuated pursuant to the 1991 version of the Disclaimer Statute based upon strict compliance with its first three provisions and substantial compliance with its fourth provision: the fourth provision simply was not at issue.

In this case, Tracy does not dispute that his Wavier and Assignment strictly complied with the first three provisions of the applicable version of the Disclaimer Statute and substantially complied with its fourth and final provision. For the reasons set forth in Phillip’s Opening Brief and herein, this Court should find that Tracy’s status as a beneficiary of the Trust ceased when Phillip accepted the Waiver and Assignment into the Trust and reverse the trial court’s conclusion to the contrary.

B. Waiver.

Utah Code § 75-2-802 (1991) provides a means whereby an individual can terminate his or her interest in a testamentary transfer of property. However, it does not contain any language indicating that compliance with its provisions is the only way to terminate an interest in a testamentary transfer. In fact, subsection (5) expressly provides, “[t]his section does not abridge the right of persons to waive, release, assign, convey, disclaim, or renounce property or an interest in it under any other statute.” UTAH CODE ANN. § 75-2-802(5) (1991).

Although Tracy argues that subsection (5) was only intended to limit the application of the Disclaimer Statute to testamentary dispositions, an interpretation of subsection (5) to that effect ignores its plain language and would render it meaningless since subsection (1)(a) already addresses the extent to which the Disclaimer Statute is applicable to property dispositions. *See* Tracy’s Reply Brief at 8; UTAH CODE ANN. § 75-2-802(5) (1991) (“A person . . . who is a . . . beneficiary under a nontestamentary instrument or contract . . . may disclaim in whole or in part the right of transfer to the person of any property or interest in it by delivering or filing a written disclaimer under this section.”).¹

¹ In any event, whether the Disclaimer Statute is applicable to other property dispositions in addition to those of a testamentary nature is irrelevant to whether another statute provides a means whereby individuals can rid themselves of testamentary dispositions.

Tracy's unsupported assertion that subsection (5) is "introductory language" that only "applies to transfers and dispositions other than [testamentary dispositions]" is similarly without merit. *See* Tracy's Reply Brief at 8. As an initial matter, subsection (5) cannot be trivialized as "introductory language." It follows provisions describing a means of disclaiming a testamentary disposition and is clearly intended to be substantive. "When examining the statutory language we assume the legislature used each term advisedly." *State v. Martinez*, 2002 UT 80, ¶ 8, 52 P.3d 1276. Consequently, "effect must be given, if possible, to every word, clause and sentence of a statute." *State v. Maestas*, 2002 UT 123, ¶ 53, 63 P.3d 621.

Furthermore, while the language of subsection (5) certainly applies to transfers and dispositions of property other than testamentary dispositions, there is simply nothing in subsection (5) or any other subsection of the Disclaimer Statute purporting to elevate the Disclaimer Statute into a position of being the only means whereby individuals can rid themselves of testamentary dispositions. Contrary to Tracy's assertion, allowing an interest in a testamentary disposition to be waived pursuant to the principals of equity, as codified in Utah Code § 75-7-106, does not render the Disclaimer Statute meaningless.

"The usual effect of the disclaimer statute is to avoid the imposition of transfer taxes and to thwart creditors." *Whitney v. Faulkner*, 2004 UT 52, ¶ 14, 95 P.3d 270. It makes sense that the legislature would provide a statutory means of disclaiming an interest in a testamentary disposition by which an individual can be assured that he or she

will not be subject to transfer taxes and the disclaimed interest will not be subject to the claims of creditors.

It also makes sense for the legislature to provide an alternative means of riding oneself of an interest in a testamentary disposition for those not concerned with avoiding transfer taxes or thwarting creditors.² Why not allow “persons to waive, release, assign, convey, disclaim, or renounce” an interest in a testamentary disposition pursuant to compliance with the terms of another statute if avoiding transfer taxes and thwarting creditors is not the goal? *See* UTAH CODE ANN. § 75-2-802(5) (1991).³

The Utah Supreme Court recently observed, “[t]he mere fact that the legislature may have provided an avenue of relief for a particular injury does not preclude alternative methods of recovery for that same, or a similar, injury absent some evidence that the legislature intended that its statutory remedy be the sole avenue of relief.” *Ashby v. Ashby*, 2010 UT 7, ¶ 25, 227 P.3d 246. Just as the legislature does not render an avenue

² There are numerous reasons one may desire to disclaim or refuse an interest in a trust other than to thwart creditors or avoid transfer taxes. These include complying with the wishes of a settlor (particularly if the settlor is a parent or other close relative), avoiding involvement in an anticipated lawsuit over the assets, not needing the interest and/or desiring that someone else receive it or benefit from it.

³ This also applies to Phillip’s substantial compliance argument. It seems that if strict compliance is the standard, it should only apply to those transfers intended to avoid creditors and/or transfer taxes, both of which affect the rights of third parties, e.g. creditors and the government. In the present case, however, Tracy’s waiver or disclaimer carried no such purpose or effect. Accordingly, requiring strict compliance in this case is only an exercise in raising form over substance in order to prop up the purpose or policy behind the statute, which, in the end, has no application to this case.

of relief for a particular injury meaningless by not making it the sole avenue of relief, the legislature did not render the Disclaimer Statute meaningless by allowing individuals to rid themselves of a beneficial interest in a testamentary disposition by effectuating a waiver, release, assignment, conveyance, disclaimer, or renunciation pursuant to compliance with another statute. *See* UTAH CODE ANN. § 75-2-802(5) (1991).

In fact, it is not uncommon for the legislature to provide alternative means of accomplishing the same result. *See, e.g., Ashby v. Ashby*, 2010 UT 7, ¶ 25, 227 P.3d 246; *Grand County v. Emery County*, 2002 UT 57, ¶¶ 11-13, 52 P.3d 1148 (describing two “alternative” statutory methods to effectuate an annexation); *Cole v. Jordan School Dist.*, 899 P.2d 776, 778 (Utah 1995) (“The legislature amended section 63-30-11 to provide minors with an alternative to filing a notice of claim within one year”); *City Consumer Services, Inc. v. Peters*, 815 P.2d 234, 238 (Utah 1991) (“In 1961, the Utah legislature enacted the Utah Trust Deed Act, which provided an alternative to the mortgage foreclosure process.”); *State v. Judd*, 493 P.2d 604, 606 (Utah 1972) (“The legislature has acknowledged the unique circumstances of the mother or pregnant woman and offered her two alternative remedies.”); *Hess v. Udy*, 185 P. 367, 368 (Utah 1919) (noting “the wisdom of the Legislature in providing an efficient alternative remedy that can be resorted to at the option of the party injured”).

Providing alternative means of accomplishing the same result does not render one of the means meaningless, especially when, like those seeking to rid themselves of a testamentary disposition, the result may be sought for differing reasons. In this case,

Tracy waived his beneficial interest in the Trust either when he signed the Waiver and Assignment or when he drafted and sent the letters to Phillip and Robert. With respect to the letters to Phillip and Robert, Tracy argues that the inclusion of certain language in the letters regarding whether he signed the Waiver and Assignment evidences that Tracy did not intend to relinquish his interest in the Trust by drafting and sending the letters. *See* Tracy's Reply Brief at 8. However, a thorough examination of the letters clearly evidences that Tracy was attempting both to waive his interest in the Trust and cast doubt on whether he signed the Wavier and Assignment. In his letter to Phillip, Tracy wrote the following:

No, I'm not going to do anything about that Estate. It's not worth it to me. I'm not that small of a person.

So, I guess the two of you can do what you want.

You did say that I signed some paper. I don't remember if I did or didn't. . . .

. . . .

I have one question for you, brother. Do you think that I, or anybody else, for that matter would intentionally and knowingly sign away there [sic] inheritance? No, and neither would you.

. . . .

Like I said, I'm not going to do anything about the estate.

See Letter from Tracy to Phillip; Addendum Exhibit "E". Similarly, Tracy wrote to Robert the following:

First of all, I'm not going to do anything about the estate. I'm not that small of a person, so I guess the two of you can do what you want.

. . . .

I don't remember whether I signed anything or not Do you think I would intentionally sign away my inheritance? Would you? I don't know of anybody that would.

See Letter from Tracy to Robert; Addendum Exhibit "F".

Each letter begins with a statement of Tracy's intent to waive his beneficial interest in the Trust. Tracy then mentions the Waiver and Assignment, states that he does not remember whether he signed it, and then poses a rhetorical question to convince Phillip and Robert that he did not sign the Waiver and Assignment.

This attempt to convince Phillip and Robert that he did not sign the Waiver and Assignment, however, does not constitute a revocation of his contemporaneous waiver of his beneficial interest in the Trust. In fact, after posing the rhetorical question casting doubt on whether he signed the Waiver and Assignment, Tracy confirmed his intent to waive his interest in the Trust at the end of his letter to Phillip when he stated, "Like I said, I'm not going to do anything about the estate." *See* Letter from Tracy to Phillip; Addendum Exhibit "E".

As a result, Tracy waived both his beneficial interest in the Trust and the claims he is now asserting against Phillip for breaching his fiduciary duty of loyalty to Tracy either when he signed the Waiver and Assignment or when he signed and sent the letters to Phillip and Robert.

C. Mutual Modification of the Trust.

Tracy correctly points out that a trust may be modified or revoked solely by the settlors of the trust if the power to do so is reserved by the terms of the trust. *See* Tracy's Reply Brief at 9. Tracy also correctly points out that in this case the power of the settlors, Don and Barbara Southwick (hereinafter "Don and Barbara"), to unilaterally modify the Trust was not reserved in the Trust Agreement. *See* Tracy's Reply Brief at 9-10; Addendum Exhibit "E". However, these points are irrelevant since Phillip's argument is that the Trust was mutually modified by the settlors and all of the beneficiaries, not that it was unilaterally modified by Don and Barbara.

In addition to the power of the settlors to unilaterally modify or revoke a trust when that power is reserved by the trust instrument, "[a] noncharitable, irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust." UTAH CODE ANN. § 75-7-411 (Supp. 2005) (emphasis added). This statute codified the well-settled common law "that all beneficiaries can terminate a trust even though its continuance is necessary to carry out a material purpose of the trust when the settlor(s) consent to its termination." *See Sundquist v. Sundquist*, 639 P.2d 181, 187 n.2 (Utah 1981); *see also Clayton v. Behle*, 565 P.2d 1132, 1133 (Utah 1977) (a trust may be terminated "where all the beneficiaries thereof consent").

The only argument advanced by Tracy to dispute that he was removed as a beneficiary of the Trust pursuant to a mutual modification of the Trust by the settlors and

beneficiaries is that “the [Wavier and Assignment] is not a consent to any modification” and the Joint Release “does not adversely affect any beneficiary other than Don.” *See* Tracy’s Reply Brief at 9-11. However, these arguments ignore the plain language of the Wavier and Assignment and the Joint Release.

By executing the Joint Release, Don and Barbara agreed “to convey and transfer all of the assets located in [the Trust] to Barbara P. Southwick as the sole beneficiary under the terms of [the Trust].” *See* Addendum Exhibit “C”. In designating Barbara as the sole beneficiary, Don and Barbara necessarily agreed for Tracy to no longer be a beneficiary of the Trust.

By executing the Wavier and Assignment, Tracy agreed to “renounce[] any claim he may have to any of the Trust.” Tracy then directed the Trustee “to distribute [Tracy’s] share of the Trust Estate to PHILLIP D. SOUTHWICK” as if to punctuate his renunciation of his beneficial interest in the Trust. In renouncing his interest in the Trust, Tracy clearly agreed to no longer be a beneficiary of the Trust.

Phillip affirmatively consented to the trust modification by accepting the Joint Release and the Waiver and Assignment into the Trust. [R. 1066, 1068-69 (Findings of Fact ¶¶ 12,13, 17)]. Robert testified that he also affirmatively consented to the trust modification. [R. 1092 (Trial Transcript at 273-274)]. Since everyone associated with the Trust affirmatively manifested consent to divest Tracy of his beneficial interest in the Trust, the Trust was modified by mutual consent and Tracy ceased thereafter to be a beneficiary of the Trust.

II. AFFIRMATION ON OTHER GROUNDS.

The ability of the public to rely on judicial decrees is a fundamental principal of justice. Likewise, it would be manifestly unfair to subject a third party to liability for acting in accordance with a court order just because it was subsequently found to be flawed. “To [hold that a party cannot rely on a court order] would be to . . . condemn parties to the instability of guessing which orders to abide and which orders to ignore. This will not do.” *In re Demos*, 57 F.3d 1037, 1039 (11th Cir. 1995).

Indeed, “[a]s a matter of logic and equity, it seems that a party should be able to rely upon orders of [the trial courts] without having to anticipate how those orders might be modified by subsequent action of the Supreme Court.” *Matter of Heizer Corp.*, 1989 WL 112547, *2 (Del. Ch. 1989) (unreported opinion). Accordingly, the courts have repeatedly refused to penalize parties for conducting themselves consistently with an order even when the court was not ultimately authorized to make the order.

In one case, for example, “the trial court entered an order extending the time for filing the record.” *Murphy v. Dumas*, 343 Ark. 608, 609 (Ark. 2001). Although the Arkansas Supreme Court found that the “extension order was void and of no effect,” it declined to punish the party that had relied on the trial court’s error:

[W]e are reluctant to dismiss an appeal when the appellants relied on an order of the trial court, albeit an erroneous order, which gave them until January 29, 2001, to file their record. . . . We have held in the past that parties are entitled to rely on a trial court’s order extending time even when the trial court may later vacate the order or when a judgment was erroneously entered. This principal should apply to the facts of this case.

Id. at 610 (internal citations omitted).

In this case, Tracy would have Phillip held liable for breaching a fiduciary duty to Tracy by not treating Tracy as a Trust beneficiary. He argues that the Decree of Divorce did not and could not amend the Trust or otherwise terminate Tracy's interest in the Trust without Tracy's consent. *See* Tracy's Reply Brief at 12-15. However, these arguments ignore the fact that the Decree of Divorce purported to do just that by directing "the Trustee, Phillip D. Southwick, to do whatever is necessary to . . . make Barbara P. Southwick the sole beneficiary of the assets of the trust as her sole and separate property." [R. 1066, 1067 (Findings of Fact ¶ 8); R. 1008 (Def. Exhibit 3); Addendum Exhibit "B"].

To treat Tracy as a beneficiary would have been inconsistent with the Decree of Divorce and the steps subsequently taken by the Southwicks, including Tracy,⁴ to comply with the Decree of Divorce.⁵ Holding Phillip liable for complying in good faith with a flawed court order would be unjust. Consequently, the trial court's judgment—that Tracy

⁴ It is interesting to note that Tracy also conducted himself in accordance with the Decree of Divorce by signing the Waiver and Assignment. [R. 1066, 1068 (Findings of Fact ¶ 15); R. 1008 (Def. Exhibit 6); Addendum Exhibit "D"]. It is disingenuous for Tracy to now argue that it was unreasonable for Phillip to rely on the Decree of Divorce, Don & Barbara's Joint Release, Tracy's Waiver and Assignment, and Tracy's Letters.

⁵ If the Court finds that it was reasonable for Phillip to rely on the Decree of Divorce, it must also find that it was reasonable for Phillip to comply with the request made by Barbara for Phillip and Robert to maintain their status as beneficiaries of the Trust since it would have been reasonable for Phillip to believe that Barbara was the sole owner of the property and/or beneficiary of the Trust and could therefore do as she pleased with the Trust and its assets. *See* Restatement (Second) of Trusts § 338 (1959); R. 1066, 1068 (Findings of Fact ¶ 9).

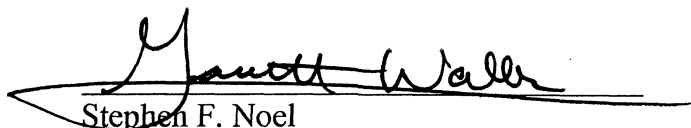
is a beneficiary of the Trust but that he is not entitled to claim an interest in pre-Complaint distributions or to assert that Phillip breached his fiduciary duties—should be affirmed.

CONCLUSION

For the foregoing reasons, Phillip respectfully requests that the Court conclude that Tracy's status as a beneficiary of the Trust was terminated by virtue of his execution of the Waiver and Assignment and/or the letters Tracy sent to Phillip and Robert. In the alternative, Phillip respectfully requests that the Court: (1) affirm the trial court's conclusion that Phillip did not breach a fiduciary duty to Tracy; and (2) find that the trial court's conclusion that Phillip suffered a detriment by relying on Tracy's statements was supported by evidence.

RESPECTFULLY SUBMITTED this 24th day of September, 2010.

SMITH KNOWLES, P.C.

A handwritten signature in black ink, appearing to read "Stephen F. Noel", is written over a horizontal line.

Stephen F. Noel

Garrett A. Walker

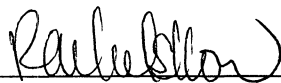
Attorneys for Defendant/Appellee/Cross-Appellant

Phillip D. Southwick

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed two true and correct copies of the foregoing **BRIEF OF APPELLEE AND CROSS-APPELLANT**, postage prepaid, to the following this 2^A day of September, 2010:

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Legal Assistant

ADDENDUM

Exhibit A	Trust Agreement
Exhibit B	Decree of Divorce—Don and Barbara
Exhibit C	Don and Barbara's Joint Release
Exhibit D	Tracy's Waiver and Assignment
Exhibit E	Letter from Tracy to Phillip
Exhibit F	Letter from Tracy to Robert

Addendum Exhibit A

TRUST AGREEMENT

DON B. SOUTHWICK and BARBARA P. SOUTHWICK of 911 North Tremont Street, Tremonton, Box Elder County, Utah, hereinafter referred to as the Trustors, hereby transfer and assign in Trust to PHILLIP D. SOUTHWICK of 1150 S. 660 W., Tremonton, Utah 84337, hereinafter referred to as the Trustee, the property described in Schedule "A" attached hereto.

All property now or hereafter subject to the provisions of this instrument shall be held, managed and distributed as hereinafter provided.

ARTICLE I

Distribution

1. Lifetime of Trustors. During the lifetime of the Trustors, the Trustee shall pay to the Trustors, for their benefit, such amounts from the principal or income of the Trust Estate as they shall from time to time direct.

2. Incapacity of Trustors. In the event the Trustors shall become physically or mentally incapacitated to an extent that they cannot conveniently attend to their own affairs, Trustee shall pay to them or apply for their benefit, such sums from income or principal as he shall determine in his sole discretion is necessary or desirable to provide for Trustors' care, support, and maintenance.

3. Death of Trustors. Upon the death of the Trustors, the Trustee shall pay out of the income and/or principal of the Trust



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Estate the expenses of the last illness and funeral of the Trustors and any debts of the Trustors to the extent that other provisions shall not have been made for the payment of such expenses or debts.

4. Distribution After Payment of Debts. Upon the death of the Trustors, the Trustee, after payment of all expenses of last illness and funeral of the Trustors and any debts of the Trustors, shall distribute the balance of the Trust Estate including income and/or principal, all cash including bank accounts, and all proceeds from life insurance policies to Trustors' sons, PHILLIP D. SOUTHWICK of 1150 S. 660 W., Tremonton, Utah 84337, ROBERT S. MILNER of 810 Cottonwood Drive, South Weber, Utah 84405, and TRACY L. SOUTHWICK of 150 Jeremy Street, Salt Lake City, Utah.

In the event Trustors' said children should predecease the Trustors or die prior to the distribution of the Trust property, leaving issue surviving them, their share in the Trust Estate shall go to their lawful issue by right of representation.

ARTICLE II

Rights Reserved by Trustors

1. Neither the Trustors or any person on behalf of the Trustors, may alter, amend or revoke this Trust in whole or in part during the lifetime of the Trustors, during incompetency of the Trustors, or after the death of the Trustors.

2. Adding to Trust. The Trustors at any time, or from time to time, or by testamentary disposition may add to this Trust other property which, when accepted by the Trustee, shall become a part of the Trust Estate to be held in trust under the terms and provisions of this Agreement.

3. Restrictions on Sale and Reinvestment. During the lifetime of the Trustors, the Trustee shall make no sale or other disposition of any property of the Trust Estate and make no investment of any money held in the said Trust Estate except as shall be designated in writing by the Trustors. Provided, however, that in the event of the incompetency of the Trustors, this paragraph shall not apply and the Trustee shall exercise his discretion without the written consent of the Trustors.

ARTICLE III

Powers of the Trustee

To carry out the purposes of this Trust and subject to any limitations stated elsewhere in this instrument, the Trustee shall have all the powers presently granted to Trustees under the provisions of Utah Code Annotated 75-7-402, in addition to any powers hereafter conferred by law and including the following powers:

1. Limitation on Investments. To invest the Trust Estate only in secured savings accounts and/or certificates of deposit in banks or savings and loan associations in which the deposits are insured by the Federal Government unless otherwise authorized by the Trustors.

2. Payment of Expenses. To pay taxes, assessments and all other expenses incurred in the administration of the Trust Estate and the protection thereof against legal or equitable attack, including counsel fees and reasonable compensation for his own services.

3. Determination of Principal and Income. To determine what is principal and income of the Trust Estate and apportion and allocate, in his discretion, receipts and disbursements as between these accounts except insofar as the Trustee shall exercise the discretion herein conferred, and except as otherwise provided in this instrument, matters relating to principal and income shall be governed by the provisions of the Utah Uniform Principal and Income Act from time to time existing.

4. No Bond Required. No Trustee or successor Trustee, hereunder, shall be required to give any bond or other security for the faithful performance of their duties, powers and discretions.

ARTICLE IV

General Provisions

1. Accrual of Income and Proration of Expenses. Income accrued or unpaid on trust property when received into the Trust shall be treated as any other income. Income accrued or held undistributed by the Trustee at the termination of any interest or estate under this Trust shall go to the beneficiaries next entitled to the next eventual interest in the proportions in which they take such interest.

2. Notice to Trustee. Until the Trustee shall receive written notice of any birth, death or other event upon which the right to payment from this Trust may depend, the Trustee shall incur no liability for the disbursements or principal or income made in good faith to persons whose interest may have been affected by that event.

3. Beneficiaries under Disability. When any beneficiary entitled to receive payments is a minor, or in the judgment of the Trustee, is mentally or physically incompetent, irrespective of whether so legally adjudicated, the Trustee, in his discretion, may expend or apply any such payments for the benefit of such beneficiaries or, in case of a minor beneficiary, may make such payments to the parents of the beneficiary or to the guardian of the beneficiary or to the person or persons with whom such beneficiary then resides. Sums necessary for support and education may be paid directly to minor beneficiaries who, in the judgment of the Trustee, have attained sufficient age and discretion to render it probable that the monies will be properly expended.

4. Survivorship of Beneficiaries. In the event any beneficiary of the Trust created by this Trust Agreement shall die prior to the expiration of a period of thirty (30) days from the date of the event entitling such beneficiary to benefits, then for the purposes of such Trust it shall be deemed that such beneficiary did not survive such event and the Trust properties shall be administered and distributed as though such ~~beneficiary~~ had predeceased such event.

5. Spendthrift Provision. Each and every beneficiary under this Trust is hereby restrained from, and are and shall be without right, power or authority to sell, transfer, mortgage, pledge, hypothecate, anticipate or in any other manner effect or impair his, her, or their beneficial or legal rights, titles, interests, claims, and estates in and to the income and/or principal of this Trust during the entire term, hereof; nor shall the rights, titles, interests, claims, or estates of any such beneficiary be subject to the rights or claims of creditors nor subject nor liable to the process of law or court.

6. Designation of Trustee. It is understood and agreed that said PHILLIP D. SOUTHWICK shall act as Trustee so long as he is living and competent. In the event of the death or incompetency of said PHILLIP D. SOUTHWICK, ROBERT S. MILNER of 810 Cottonwood Drive, South Weber, Utah 84405 and TRACY L. SOUTHWICK of 150 Jeremy Street, Salt Lake City, Utah, shall be appointed as successor Co-Trustees by a court of competent jurisdiction.

7. Trustee Entitled to Expenses and Compensation. The Trustee shall be entitled to reasonable expenses and reasonable compensation for services performed as Trustee, to be paid from the Trust Estate.

8. Definitions. The words "child", "children" and "issue" as used herein, shall include legally adopted children. The word "issue" shall also include lineal descendants indefinitely.

The words "Trustee or Trustees" are used interchangeably and

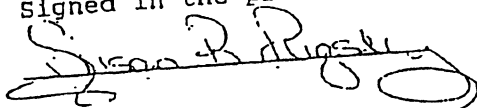
mean an original Trustee or Trustees and any successor or added Trustee or Trustees.

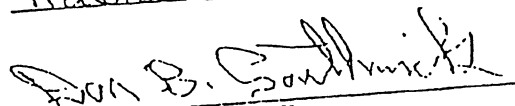
9. Separability of Trust Provisions. If any provision of this Agreement is unenforceable, the remaining provisions shall nevertheless be carried into effect.

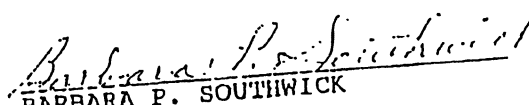
10. Law Governing Trust. This Trust has been accepted by the Trustee in the State of Utah; and unless otherwise provided in this instrument, its validity, construction and all rights under it shall be governed by the laws of that state.

IN WITNESS WHEREOF, the said, DON B. SOUTHWICK and BARBARA P. SOUTHWICK, have executed this Agreement in duplicate this 13th day of Sept, 1989 at Tremonton, Utah.

Signed in the presence of:



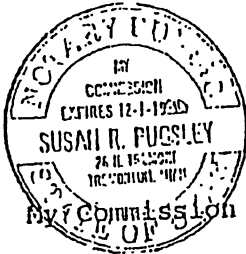

DON B. SOUTHWICK
Trustor


BARBARA P. SOUTHWICK
Trustor


STATE OF UTAH)
COUNTY OF Box Elder) ss.

On the 13th day of Sept, 1989, personally appeared before me DON B. SOUTHWICK and BARBARA P. SOUTHWICK, the signers

of the within instrument, who duly acknowledged to me that they executed the same.



My Commission Expires:
12-1-90


NOTARY PUBLIC
Residing at Trumbull, TX

SCHEDULE "A"

ATTACHED TO THE SOUTHWICK FAMILY TRUST

Dated September 13, 1989

-
- QCD 1. 11.93 Acres farm land located in Lehi, Utah County, Utah and more particularly described as follows:
- Commencing at a point 13 chains West and 4.54 chains South of the Northeast corner of the Southeast quarter of Section 20, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence East 5.75 chains; thence South 20.75 chains; thence West 5.75 chains; thence North 20.75 chains to the point of beginning.
- Together with six (6) shares of the Capital Stock of the Spring Creek Irrigation Company.
- QCD 2. 26 acres range land located in Utah County, Utah and more particularly described as follows:
- The North 26 acres of the East Half of the Southeast quarter of Section 13, Township 5 South, Range 3 West of the Salt Lake Base and Meridian.
- QCD 3. 80 acres range land located in Utah County, Utah and more particularly described as follows:
- NW1/4 of NW1/4 of Sec. 21, T. 4 S., R. 3 W., SLM; & SW1/4 of NW1/4 of Sec. 21, T. 4 S., R. 3 W., SLM. Area 80 acres.
- QCD 4. Residence located at 911 North Tremont, Tremonton, Box Elder County, Utah and more particularly described as follows:
- Lot 16, Block 2, Amended Plat W, Tremonton Townsite Survey, Box Elder County, Utah, according to the official plat thereof.
- Subject to any taxes or assessments now or hereafter levied by any taxing unit.
- SUBJECT TO a first mortgage to the First Security Bank of Utah, National Association for \$14,650.00 dated October 3, 1961 in the office of the County Recorder of Box Elder County, Utah October 9, 1961 in Book 153 of Mortgage Records at Page 110, which mortgage the grantees agree to assume and pay in accordance with the terms thereof.
- QCD 5. 11.5 acres farm land and minor subdivision at Tremonton, Box Elder County, Utah and more particularly described as follows:

Beginning at a point on the North right of way line of a frontage road 1045.3 feet East along the section line and 284.2 feet North of the S.W. Corner of Section 10, T. 11 N., R. 3 W., SLB&M said point being on the grantor's East line, and running North 57° 31' 30" West along said frontage road line 530.9 feet; thence Northwesterly 235.6 feet along the arc of a 539.96 foot radius curve to the right along said line; thence North 32° 31' 30" West 38.0 feet along said line; thence North 306.0 feet; thence North 1° 44' West 226.0 feet; thence North 87° 15' East 607.5 feet; thence South 1° 44' East 1047.3 feet to the point of beginning, containing 11.50 acres.

There are four (4) lots along the bottom of the above 11.50 acres more particularly described as follows:

LOT 1

Beginning at a point on the North line of a Frontage Road 1045.3 feet East along the Section line and 284.2 feet North from the S.W. Corner of Section 10, T. 11 N., R. 3 W., SLB&M and running N 57° 31' 30" W along said line 168.37 feet; thence N 10° 00' 00" E. 381.93 feet; thence 575° 00' 00" E 63.40 feet; thence S 1° 44' E 450.00 feet to the point of beginning, containing 1.00 acre, reserving an easement for a drainage ditch 10 feet wide along the East side.

LOT 2

Beginning at a point on the North line of a Frontage Road 1045.3 feet East along the Section line and thence North 284.2 feet and thence N 57° 31' 30" W 168.37 feet from the S.W. Corner of Section 10, T. 11 N., R. 3 W., SLB&M to the true point of beginning and running N 57° 31' 30" W along said line 134.10 feet; thence N 10° 00' 00" E 321.38 feet; thence S 84° 17' 00" E 124.26 feet; thence S 10° 00' 00" W 381.93 feet to the point of beginning, containing 1.00 acre.

LOT 3

Beginning at a point on the North line of a Frontage Road 1045.3 feet East along the Section line and thence North 284.2 feet and thence N 57° 31' 30" W 302.47 feet from the S.W. corner of Section 10, T. 11 N., R. 3 W., SLB&M to the true point of beginning and running N 57° 31' 30" W 125.00 feet; thence 40.16 feet along a curve to the right of 40.0 foot radius (Note: Chord to said curve bears N 28° 45' 45" W 38.50 feet) thence North 213.00 feet; thence East 179.78 feet; thence S 10° 00' 00" W 321.38 feet to the point of beginning, containing 0.99 acre.

LOT 4

Beginning at a point on the North line of a Frontage Road 1045.3 feet East along the Section line and thence North 284.2 feet and thence N 57°31'30" W 530.9 feet and thence N 56°20' W 72.0 feet from the S.W. Corner of Section 10, T. 11 N., R. 3 W., SLB&M to the true point of beginning and running 167.82 feet along a 539.96 foot radius curve to the right; (Note: Chord to said curve bears N 42°56'15" W 167.15 feet) thence N 32°31'30" W 38.0 feet; thence North 107.75 feet; thence East 200.00 feet; thence South 231.52 feet; thence 90.76 feet along a 40.0 foot radius curve to the right to the point of beginning, containing 1.00 acre.

- Q&P 6. All that part beginning at a point on West right of way line of County Road and the North right of way line of Utah-Idaho Sugar Co. West Canal, which point is 1095 feet North, 33 feet West of Southeast Corner of Northeast Quarter of Section 1, Township 11 North, Range 4 West, Salt Lake Meridian, and running thence North 85° 25' West 188 feet along the Canal right of way, thence North 460.9 feet, thence North 86° 00' East 188 feet to the County Road right of way line, thence South along said line to the point of beginning. EXCEPTING THEREFROM THE FOLLOWING:

Beginning at a point on the West right of way line of the County Road and the North right of way line of the Utah-Idaho Sugar Co. West Canal, which point is 1095 feet North, 33 feet West of the Southeast corner of the Northeast Quarter of said Section 1, thence North 85° 25' West 188 feet along the Canal right of way, thence North 257.9 feet, thence North 86° 00' East 188 feet to the County Road right of way line, thence South along said line to the point of beginning.

- Q&P 7. Lot 47, Block 4, Beginning N. 0' and W. 8' of the S.E. Corner, thence W. 16', thence N. 3 1/2', thence E. 16', thence S. 3 1/2' to P.O.B. 2 spaces, incl. P.M. in the Provo City Cemetery.

- Return Letter 8. Lot 1, Block 12, in the Lehi City Cemetery.

- ✓ 9. Remaining interest in the Uniform Real Estate Contract between Don B. Southwick & Barbara P. Southwick, husband and wife, as the Sellers, and Ed Muir & Lorraine Muir, his wife, as the Buyers, dated March 1, 1979, marked Exhibit "A" attached hereto. Including a 1958 house trailer, Make - Vendale, Identification Number V-2906Y102. One used electric range. One 105,000 BTU gas furnace. Escrow is being held by Brigham Realty Inc. at 83 S. Main, Brigham City, Utah.

10. 1972 Ideal house trailer, S/N 1S3325
11. 1975 GMC 1-ton farm truck, Model C35C35, VIN YCY335Z501303
12. 1979 Luv pickup truck, VIN CRN1498285318
13. 1987 Century Buick Sedan automobile, 1G4AL51WXH6418162
14. 1972 two-horse trailer, Make - ROC, I.D. 710156HT
15. John Deere Model "A" tractor, S/N 631171, approx. 45 years old
16. John Deere Model "A" tractor, S/N 574169, approx. 55 years old
17. 24 shares of capital stock in the Lehi Spring Creek Irrigation Company, Lehi, Utah. No. 30
18. 20.80 shares in Bear River Water Distribution Company, Tremonton, Utah. No. 3589
19. 85 shares in The Western States Machine Company. No. 1754
20. Guns:
 - 300 Savage, S/N 558898
 - 300 Savage, S/N 397006 w/t scope
 - 308 Savage, S/N 1085641 w/t scope
 - Remington 12 gauge, Model 870, S/N 394415V
 - Marlin 22 rifle, Model 39-A
 - Sharps rifle, 50 calibre, S/N C23407 (1948)
 - Ruger pistol, 357 Mag., S/N 157-86346
 - S&W 22 calibre pistol, S/N 116056
 - S&W 357 Mag. calibre, Mod. 27-2, S/N N327396
 - 20 gauge Ranger shotgun, S/N 105-21
 - 22 rifle, Steven Model 56
 - 410 gauge shotgun, Stevens Model 59A
 - 12 gauge shotgun, Remington Model 10A
21. 2 saddles made by Utahn Saddle Co., approx. 10 - 12 yrs. old
 - 1 youth saddle
 - 1 pack saddle
 - 2 each bridles, halters, ropes, chaps, and saddle bags
22. Electric welder made by Forney and accessories
23. Hand tools and wrenches
24. 1966 Metro truck, Model 1200, S/N 551211L006182

25. 1 buckskin mare, born 1971, Lady Bar Deck 71, #887509
1 black gelding, born 1975, Little Tamm Hawk, #1122182
1 bay mare
1 yearling buckskin gelding, born August 1988
26. All cattle with Rafter S on left hip thigh. Brand and ear
mark are registered to Don B. Southwick
27. Bank Accounts:
Logan Savings & Loan: #0303 60073915
Logan Savings & Loan: #0203 60083711
Sandia Federal Savings & Loan: #064 7010568
Sandia Federal Savings & Loan: #061 3205050

Addendum Exhibit B

DEFENDANT'S EXHIBIT	
EXHIBIT NO.	3
CASE NO.	0601-003
DATE REC'D IN EVIDENCE	
CLERK	

✓
 PETE N. VLAHOS, #3337
 VLAHOS, SHARP & WIGHT
 Attorney for Defendant
 Legal Forum Building
 2447 Kiesel Avenue
 Ogden, Utah 84401
 Telephone: 621-2464

 IN THE FIRST JUDICIAL DISTRICT COURT OF BOX ELDER COUNTY
 STATE OF UTAH

DON B. SOUTHWICK,	/	
Plaintiff,	/	DECREE OF DIVORCE
vs.	/	
BARBARA P. SOUTHWICK,	/	Civil No. <u>900000252DA</u>
Defendant.	/	Judge F. L. Gunnell

This matter having come on regularly for hearing on the 18th-day of October, 1991, before the Honorable F. L. Gunnell, one of the Judges of the above entitled Court, sitting without a jury, and the Plaintiff not appearing in person, nor with his attorney, and the Defendant appearing in person and with her attorney, Pete N. Vlahos, and Plaintiff's attorney having withdrawn as attorney for the Plaintiff by written Motion and Order and said Motion and Order was filed in open Court by the Defendant's attorney, and it having been shown to the Court that the Defendant was duly served with a copy of the Complaint and a copy of the Summons, and wherein the

DECREE OF DIVORCE 1

Vlahos, P & Wight
 ATTORNS AT LAW
 LEGAL FORUM BUILDING 2447 KIESEL AVENUE
 OGDEN UTAH 84401

SOUTHWICK VS. SOUTHWICK
Civil No.: 900000252DA

Defendant having answered same within the time allotted by statute, and wherein the Stipulation of the parties herein settling all of their property rights, alimony, support, attorney fees, Court costs and other kindred matters, and more than three (3) months having elapsed from the date of the filing of the Complaint, and the testimony of the Defendant having been heard in open Court, and the Court having been fully informed in the premises. and having made its Findings of Fact and Conclusions of Law, separately stated in writing, NOW THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant, Barbara P. Southwick, is granted a Decree of Divorce from the Plaintiff, Don B. Southwick, same to become final upon the signing and entry.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said Decree of Divorce shall incorporate herein all matters of property rights, alimony, support, attorney fees, Court costs and other kindred matters that are contained in the Stipulation and Agreement of the parties herein and same is set forth as follows:

1. That the Plaintiff and Defendant shall direct the Trustee, Phillip D. Southwick, who resides at 1150 South 660 West in Tremonton, Utah, to convey the

SOUTHWICK VS. SOUTHWICK
Civil No.: 900000252DA

necessary documents that will convey all of the property presently in said trust to the Defendant, and that the Defendant shall be the recipient and the sole beneficiary under the Trust Agreement, and that the Plaintiff shall have no further right or claim as a beneficiary in the assets that have been placed in said Trust Agreement.

2. That both parties jointly shall give written notice to the Trustee, Phillip D. Southwick, to do whatever is necessary to remove the Plaintiff. Don B. Southwick, as a beneficiary under the Trust Agreement and make Barbara P. Southwick the sole beneficiary of the assets in the trust as her sole and separate property.

3. That the Plaintiff specifically acknowledges that the Defendant shall receive the following real and personal property that is presently in the Trust Agreement as the sole beneficiary, and does convey all of his right, title and interest in and to the trust assets and waives any claim as a beneficiary thereunder.

4. That said Trust Agreement includes the following real property, to-wit:

(a) 11.93 acres of land, with 24 shares of irrigation water located in Lehi, Utah.

(b) 80 acres of range land and 26 acres of range land located in West Canyon, Utah County, Utah.

Vlahos, P & Wight

ATTORNEYS AT LAW

LEGAL FORUM BUILDING 2447 KIESEL AVENUE
OGDEN UTAH 84401

SOUTHWICK VS. SOUTHWICK
Civil No.: 900000252DA

(c) Lots 3 and 4 being part of 11.5 acres of land located at approximately 1100 South 850 West in Tremonton, Utah, including 4.96 hours of irrigation water.

(d) The equity in the family home at 911 North Tremont located in Tremonton, Utah, which has an equity of \$14,500.00, and the Plaintiff shall sell said home without any commission and shall bring all mortgage payments current to the date of sale, provided however Defendant shall vacate the home within thirty (30) days after the divorce is granted. That if the family home does not bring a net of \$14,500.00 equity for the Defendant, the Plaintiff shall reimburse the Defendant from his own personal assets all sums up to \$14,500.00 so that the Defendant shall receive a net equity of \$14,500.00.

(e) Five lots in Lot 1 Block 12, Lehi Cemetery.

5. That Plaintiff shall assume the Nadine Peters' note of \$26,000.00 for the 9 1/2 acres, with 9.54 hours of water, which is part of the 11.5 acres of land set forth in item (c) hereinabove.

6. That the Plaintiff shall convey and do whatever is legally proper and necessary to convey to the Defendant all other items of real and personal property

DECREE OF DIVORCE

SOUTHWICK VS. SOUTHWICK
Civil No.: 900000252DA

as listed on the family Trust Agreement and all other items presently owned by the trust by and between the two (2) beneficiaries, Don B. Southwick and Barbara P. Southwick, designated as Plaintiff and Defendant respectively herein. That the Plaintiff shall further convey to the Defendant all items of real and personal property, except as to those items he shall retain that is not included in the trust and all items of real and property included in the trust to the Defendant as her sole and separate property.

7. That the Plaintiff shall receive as his sole and separate property all of his clothes, small personal items, such as toiletries, etc., and that the Plaintiff is also awarded the 1980 Luv pickup truck as his sole and separate property.

8. That the Plaintiff shall manage and take care of the business building until the bank makes a decision as to the disposition and said agreement is finalized and further shall defend any lawsuit sought by the bank for the foreclosure on said property. That the Plaintiff shall be entitled to receive the rental income during the interim and shall also manage said business building until that matter is disposed of, either by foreclosure or sale, and the Plaintiff shall divide the rental income

SOUTHWICK VS. SOUTHWICK
Civil No.: 900000252DA

from the building equally between Plaintiff and Defendant, minus the reasonable expenses necessary in maintaining the building, which the Plaintiff shall furnish the Defendant a full accounting of.

9. That the Plaintiff shall further pay to the Defendant the sum of \$145.00 per month as and for alimony, payable each month on or before the 15th day of the month, commencing with the month of October. That in addition, shall pay to the Defendant a proportionate increase of his social security benefits as additional alimony as he receives any additional payments in his social security, and that the intent is to attempt to equalize the income the parties are receiving for marital assets, provided however the alimony shall terminate upon the death of the Defendant or the Defendant's remarriage.

10. That the Plaintiff shall pay to Defendant's attorney, Pete N. Vlahos, the sum of \$500.00 as and for partial attorney fees for the preparation of the Stipulation, plus presenting the matter to the Court and preparing the subsequent papers granting to the parties the divorce.

11. That the Defendant further shall bring current and pay the property taxes on the 11.5 acres of land located in Tremonton and on the land located in Utah

SOUTHWICK VS. SOUTHWICK
Civil No.: 900000252DA

County, said taxes shall be for the years 1990 and 1991.

12. That the Plaintiff shall further provide to the Defendant the necessary cash at the execution of the Stipulation, to bring current the delinquent house payments on the family home, which is located at 911 North Tremont in Tremonton, Utah.

13. That the Defendant shall utilize the trust properties to attempt to satisfy any deficiency that might arise from the business building, which is presently being foreclosed upon, if the trust properties are still in existence at the time of the final judgment and shall utilize said assets if they are in existence and if the Defendant has control over said trust properties to attempt to satisfy any deficiency on the pending foreclosure, provided however that if she does not have any control over the assets in the trust, then she would not be obligated to satisfy said foreclosure judgment if one does occur.

14. That each of the parties shall sign whatever papers are legally necessary to effectively transfer the interest that each is to receive in connection with this agreement and upon failure to do so, the Stipulation and Property Settlement Agreement shall serve as the full agreement between the parties and shall serve as an

Vlahos, p & Wight
ATTORNEYS AT LAW
LEGAL FORUM BUILDING 2447 KIESEL AVENUE
OGDEN UTAH 84401

SOUTHWICK VS. SOUTHWICK
Civil No.: 9G0000252DA

effective and complete transfer of all assets that each party is to receive under the terms of the Stipulation and Property Settlement Agreement.

15. That the Defendant shall assume and discharge all other attorney fees she owes to her attorney, other than the amount that the Plaintiff is contributing herein.

16. That Plaintiff shall assume and discharge his own attorney fees and costs.

DATED this 4 day of ^{NOV.}~~October~~, 1991.

IS/F.L. GUNNELL
F. L. GUNNELL,
District Court Judge

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Decree of Divorce was posted in the United States mail, postage prepaid and addressed to Don B. Southwick, Plaintiff, at 6th North 100 West, Tremonton, Utah 84337 on this 27 day of October, 1991.

Tina Marie Nelson
Secretary

DECREE OF DIVORCE

8

I, CERTIFY THAT THE FOREGOING
IS A TRUE AND CORRECT COPY
OF THE ORIGINAL F. FORM FIRST
DISTRICT COURT BY CLERK

DATE Nov 4 1991
Maureen R. Kistner
CLERK

PS000029

Addendum Exhibit C

DEFENDANT'S EXHIBIT	
EXHIBIT NO	3
CASE NO	0601-003
DATE REC'D IN EVIDENCE	
CLERK	

October 7, 1991

Mr. Phillip D. Southwick
1050 South 660 West
Tremonton, UT 84337

Re: Southwick vs. Southwick
My File: 400-V

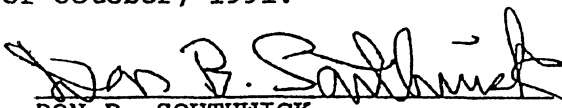
Comes now the undersigned, Don B. Southwick and Barbara P. Southwick, beneficiaries under that Trust Agreement dated September 13, 1989 and which was signed in Tremonton, Utah, and hereby direct said Trustee to convey and transfer all of the assets located in said trust to Barbara P. Southwick as the sole beneficiary under the terms of said Trust Agreement.


That the undersigned, Don B. Southwick and Barbara P. Southwick, direct the Trustee to do whatever is legally necessary to remove Don B. Southwick as a beneficiary under the terms of that Trust Agreement and to designate Barbara P. Southwick as the sole beneficiary under the terms of the Trust Agreement hereinabove designated.

That both parties acknowledge they have a copy of the Trust Agreement and that the direction being made to the Trustee is based on the Stipulation and Property Settlement Agreement entered into by and between Don B. Southwick as Plaintiff and Barbara P. Southwick as Defendant in a pending divorce action, located in the First Judicial District Court of Box Elder County, State of Utah, bearing civil number 900000252DA.


That this letter is signed by both beneficiaries and directed to the Trustee pursuant to their rights under the Trust Agreement.

DATED this 17th day of October, 1991.

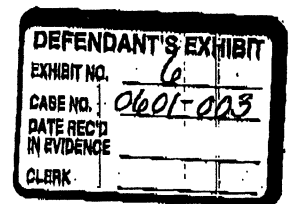

DON B. SOUTHWICK,
Plaintiff & Beneficiary


BARBARA P. SOUTHWICK,
Defendant & Beneficiary

Approved and accepted by the undersigned as
trustee this 12th day of Dec., 1991.


Phillip D Southwick
Trustee

Addendum Exhibit D



January 24, 1992

Mr. Phillip D. Southwick
1050 South 660 West
Tremonton, UT 84337

Re: Don B. Southwick and Barbara P. Southwick Trust

Dear Mr. Southwick:

Comes now the undersigned, TRACY L. SOUTHWICK, beneficiary under that Trust Agreement dated September 13, 1989 which was signed in Tremonton, Utah, and hereby renounces any claim he may have to any of the Trust Estate including income and/or principal, all cash including bank accounts, and all proceeds from life insurance policies and further directs said Trustee to distribute his share of the Trust Estate to PHILLIP D. SOUTHWICK.

DATED this 31 day of January, 1992.

TRACY L. SOUTHWICK
Beneficiary

Approved and accepted by the undersigned as Trustee this 12
day of March, 1992.

PHILLIP D. SOUTHWICK
Trustee

Addendum Exhibit E

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4-7-02

Dear Phil

I'm writing to you, because I need to talk to you, and I guess your phone calls are screened, so I'll try this. I'm sending a copy of this to Dad, so if this doesn't get to you, he will give that one to you personally.

I have been going to write you for some time, but I couldn't get my thoughts together. With my wife getting operated on for bladder cancer last week, I'll start this letter now, but it will probably be a few days before I finish it. I've known for sometime there was something drastically wrong with her. I hope you can read this, I don't have very good penmanship.

After your mother passed, I tried to call you several times, but like I said earlier, I couldn't get to you. So I called Bob. I told him that I wanted to come up and visit with both of you and offer my sympathy. I just wanted to talk about old times, etc. I told him I wasn't going to the funeral, one reason being I hadn't worked very much for the last couple of months and they had some work the last half of the week. I needed that desperately, plus my boss told me I had to be there.

When I said that, he went crazy on me. I guess it pissed him off. I don't know why, I had probably seen her and talked to her, a hell of a lot more

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in the last 20 years ^{man} he had. From what I understand, he didn't want nothing to do with her or dad or anybody else. ^{man} ~~Man~~, how things change! He ~~was~~ accused me of never calling anybody for 20 years. Well he doesn't know what he's talking about, I've sent Xmas cards ^{and called} etc to both of you, whether you ever seen them, I don't know. He's the one that never called or tried to keep in touch. Yes, I'll concede that I should have done more to keep in touch with both of you.

Phil, I do hope things are going well for you now. I know it has been rough on you. Phil, you're my brother. I don't want this mess to come in between us and ruin what was there. I would like for us to get closer.

No, I'm not going to do anything about that estate. It's not worth it to me. I'm not that small of a person.

As I guess the two of you can do what you want.

You did say that I signed some paper. I don't remember if I did or didn't. I do know, and so do you, that during their divorce there was a hell of a lot of manipulation! Dad came down to Salt Lake and Leshi alot then, and he told me alot about what was going on. Probably alot you don't know about.

For one thing, he said, one day, that on the estate, that all the names had to be taken off, things divided, then redone...

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Well evidently, that didn't happen, like he was told it would, only partially.

Phil, like I said there was a lot of manipulation, unfair manipulation. I know one thing, she didn't want me to have ^{anything!} ~~nothing~~. Example, that old Sharps rifle. Dad brought that down to me, before the divorce was there. It was supposed to go to oldest to oldest, etc. She found out about that, said to get it back ~~or~~ she would stop the divorce, she wanted it. Well, for one thing she couldn't stop the damn thing.

I have one question for you, brother.

Do you think that I, or anybody else, for that matter would intentionally and knowingly sign away their inheritance? No. And neither would you.

Like I said, there was a lot of manipulation and according to Dad, deception.

Phil think back, you have been manipulated quite a bit in recent years, also.

Well, brother, I've went into a lot more in this letter than I wanted to. I want to talk to you and visit with you, like we used to go to lunch. In all I can do is ask you to call me, I will come to Transcon ~~or~~ meet you in SLC, or where ever.

Well, Phil enough of this, there are a lot of things that happened over the years that I'm sure

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you are not aware of, that I won't go into in this letter.

Like I said, I'm not going to do anything about the estate. I know Phil, you are a fair and honest person, and you do have a conscience, and you'll do what's right.

I don't want anymore to come between us - To me, the best thing to come out of all this, would be to develop a closer relationship with my brother.

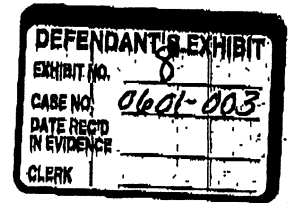
Please call, there is alot to talk about.

With Love, your brother
Leary

801-226-1472

801-319-7807 cell

Addendum Exhibit F



4-20-02

Dear Bob,

I just got through writing a letter to Phil today, that I started 2 weeks ago. I hope this doesn't take that long to get to you. I've wanted to write to both of you for some time, but haven't been able to put my thoughts together.

I feel that I need to talk to you and visit with you, to tell you of things that happened that I don't think you are aware of. I have a hard time writing a letter, but I will try and touch on some of them.

Please excuse my poor penmanship and there may be some misspelled words.

First of all, I'm not going to do anything about the estate. I'm not that small of a person, so I guess the two of you can do what you want.

Now about the last time we talked on the phone when you went kind of crazy on me, where I told you I wouldn't be up to the funeral. Well I hadn't hardly worked for 2 months, and my wife had been having a bunch of tests, and I was really hurting financially. My boss had said one day I could have time off that week then some work came up and he said I had to be there. Like I said, I really needed the work, but was going to come up at night or on Sat. Until you let me know I was not welcome.

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About calling every 20 years, you are wrong. I called your mother before the divorce all the time. I tried to get a relationship with you around 1988. Granted I should have tried harder, and kept it up. I have also tried, but not hard enough, to stay in touch with Phil.

Before I go any further I do want to offer you my sympathy for the loss of your mother.

I ~~as~~ all I wanted to do Bob, was to visit with the two of you about old times, etc.

Yes, last summer when I called you, I went off half cocked. I had heard a lot, and it finally hit me how I was ~~intentionally~~ getting screwed. I was hurt, mad & confused. I couldn't figure out why I had not done anything to her. How would you feel?

Bob, I know you are not much on family, that is your choice, but I don't want to lose my brother. I really ~~to~~ want to try and build up our relationship.

Now I want to touch on a couple of things that I know what happened during the divorce, the manipulation.

When they were getting their divorce, dad came down to Lohi + Salt Lake where I was living, a lot.

I don't ~~remember~~ remember whether I signed anything or not, but he told me once that ~~that~~ he was told ~~that~~ by your mother and lawyer,

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that all the names were to come off the estate, property divided, then redone. Well, evidently only 2 names came off. You know Dad was manipulated all thru that. Do you think I would intentionally sign away my inheritance? Would you? I don't know of any body that would.

Another thing, just before it was done Dad brought down the old Sharps rifle to me. It was supposed to go to oldest to oldest, etc, she found out about that, demanded it be given to her or she would stop ^{the} divorce, which she couldn't have. Bob, she did not want me to have anything!

I'm sorry for the feelings you and Phil have for me. I feel there is a lot of misunderstanding, that could be cleared up quite easy if we talk. I will meet you anywhere or come to Ogden. I don't want to lose you for a brother.

Well, I'll close, there is a lot more to talk about, Please call me.

With Love, your brother

Henry

801-226-1472

801-319-7807 cell

P.S. Please see if Phil received his letter, if not tell him I sent Dad one sealed for him, just in case he didn't get it.